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Consumer rights and legal guarantees in the European Union under Directive 1999/44/EC

BACHELOR THESIS

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I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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Abstract

In the modern world and united legislation across Europe consumer protection is becoming more influential and stronger. To everything positive there, of course, are drawbacks or so-called ‘‘grey areas’’ which this research unveils. Because of certain principles set out by the European Union each country has the opportunity to create their own standards regarding guarantees and this research reveals to what extent consumer protection can go. To understand the reasoning for certain standards three countries are compared – Germany, Sweden, and the United Kingdom. With the use of different research methods and analysis answers to raised questions are found and concluded. Analyzing existing legislation, cases, comparing different countries and with help of economic analysis, it reveals what kind of problems are there regarding Directive 1999/44/EC and possible reasoning behind it. Also because of recent European Union problems with Brexit, it sets out valuable considerations and topic is connected with ongoing issues.

Summary

The research involves an overall look and analysis of consumer protection laws in the European Union regarding the Directive 1999/44/EC. This Directive has brought a new light into consumer's lives in the European Union. Of course, everything cannot be so perfect and this research reveals what are problems or so-called "grey areas" connected with this legislation. The main questions in this thesis are:

1. What are the "grey areas" associated with Directive 1999/44/EC on consumer and also on the EU level?
2. Because of minimum harmonization principle, to what extent consumer protection standards can go? What were problems when implementing this Directive into national legislation?
3. How are transaction costs associated with consumer and how to define them?

This research consists of 3 parts with different methodological approaches. Each part is meant to gradually bring answers to the proposed questions. Firstly, doctrinal research answers to problematic fields by analyzing legislation and case law. Secondly, the comparative method is used to reveal different standards throughout the EU, specifically reviewing Germany, Sweden, and the United Kingdom. Thirdly, interdisciplinary approach of economics and use of transaction costs theory, warranties are interpreted into the consumer to the seller relationship.

The topic is interesting and actual because consumer rights have been developing throughout 20 years in the EU and there is potential for expenditure for more supplements. The research helps to understand how to more effectively exercise rights and what are the "pitfalls" in consumer to the seller relationship. Another actuality is that one of the researched countries is the United Kingdom. Because of Brexit, there is unexpected future for the relationship between the EU and the UK that would of course also affect consumers.

The unveiled "grey areas" concluded in the research are that consumers should be more informed and involved with their rights in the European Union. Case studies reveal the main issues that sometimes companies try to mislead the consumer. Meaning that companies set out their own terms, tell the consumer that their legal guarantee has expired before the actual expiry date, do not answer to the consumer's inquiries or any other way to avoid the consumer. To solve this EU has created ECC-net that helps to deal with shady companies. On the EU level, there are issues according to the case law that wrong text and bad implementation can lead to more significant issues when national law contradicts the EU law.

In the second part Germany, Sweden, and the United Kingdom were compared based on their standards and techniques of implementation. Germany as one of the founders of the EU has minimum standards of 2-year legal guarantee. Sweden is one of the successors in northern Europe with 3 years of the legal guarantee because of pre-existing provisions on consumer protection before the Directive. The United Kingdom has significant "gold plated" standards of 5 years of legal guarantee and 6 years in the region of Scotland and it also had some provisions on consumer protection beforehand. The conclusion is that no matter how many years a country had been in the EU the standards and implementation is purely based on the country's capacity and previous work on legislation.

The last part takes an economic perspective by using transaction costs. Firstly they are analyzed on the manufacturer to retailer relationship and how they contribute to the warranty. Transaction costs may increase if the manufacturer takes responsibility for it, but if the seller does it there is more potential for profit that involves bigger risk. On consumer to the seller relationship, transaction costs are interpreted as a different measure. Whenever a consumer buys something and activates legal guarantee there are different costs to it. People are behavioral beings and they act on an emotion that is why transaction costs contribute to psychological costs. When a legal guarantee is activated there is a lot of time, energy and emotions spent on getting the product repaired, replaced or refunded for money.

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Abbreviations

EU	European Union
ECJ	European Court of Justice
EC	European Commission
ECC	European Consumer Center
ECC-net	European Consumer Centers network
TFEU	Treaty on the Functioning of the European Union
CSG	Consumer Sales and Guarantees
CISG	Convention on Contracts for the International Sale of Goods
UK	United Kingdom
BGB	German Civil Code
ADR	Alternative dispute resolution
AG	Advocate General
GDP	Gross Domestic Product

Introduction

Consumer protection is one of the influential movements in the modern world which creates safety for people that they can less likely be granted with faulty goods or products that does not work as they supposed to. One of the issues is that in many cases people have a low-level understanding of their rights and a lot of companies take advantage of ordinary people by setting out their own terms. This is why Directive 1999/44/EC (CSG Directive) gives clearance to people about how they are protected, what they can do in cases of suspicion and how to solve them. Dodgy companies fooling consumers, ignoring them or even insisting to pay extra costs for repairs when the consumer actually is protected with certain rights. The European Union makes good work at educating consumers in our modernized world of internet and improving consumer protection from different aspects. The Consumer Sales and Guarantees Directive works based on “minimum harmonization” principle, which means that each country has opportunity to make consumer protection legislation based purely on this principle or even dictate their own standards or guarantees. The research mirrors to what extent these standards can go and how it differentiates between the European Union member states. With the following situation regarding the United Kingdom and Brexit, it is uncertain how it would affect consumer protection between the EU and the UK. The importance of this research lies in the education of consumer protection by unveiling the so-called “grey areas” and ongoing political agenda.

There are several aims in this research to hand it over to people who are interested to acknowledge their rights in the European Union. Although the EU tries to educate people within the union, there are still areas which give uncertainty. One of the first thoughts is that consumer protection could not be perfect field although it has a good aim, on the second hand it is too one-sided, bringing many advantages to the consumer but with that also delivering more responsibilities and sometimes problems to the producers. With that being said, one of the research questions is what are the “grey areas” regarding the Directive 1999/44/EC? By following this question the simple consumer to producer problems are researched and also expanding the inquiry to the European Court of Justice to reveal what kind of problems are there on the EU to the member state level. Since the Directive 1999/44/EC works on “minimum harmonization” principle, there is differentiation in legislation in almost each member state. Another aim of this research is to reveal to what extent the minimum harmonization principle can go differencing between member states and what are the problems, techniques when implementing this Directive into their national legislation? With such an opportunity given by the EU for countries to set their own standards, it is almost like a little competition. The significance is in the unveiling of which country and why has higher standards.

The research involves different methodological approaches to reach the goal of a better understanding of consumer protection and also to disclose the main research questions. Firstly, the doctrinal research method is used to perceive on what principles legislation is built, what are the instruments and relevant cases regarding Consumer Sales and Guarantees Directive. Secondly, comparative research method takes a deeper perspective into the legislation and implementation of Directive. The compared countries in the research are Germany, Sweden, and the United Kingdom. It helps to understand the usage of principles set out by the European Union and what kind of problems is involved when transposing the EU legislation into their national law. Thirdly, the interdisciplinary method is used to have a

different approach to this topic, more precisely from an economic point of view involving the transaction costs and accounting of warranty. It reveals

This thesis consists of 3 parts with three different research methods used as already described. In the first part, the author unveils the so-called ‘grey areas’. Starting from the background of the Directive and how it was created and evolved into the legislation we know now. The use of minimum harmonization principle, scope of the Directive and differences between legal guarantee and commercial warranty is briefly explained to have better understanding further on when analyzing the actual problems that are connected with the Consumer Sales and Guarantees Directive. There is described how important the European Consumer Centers network is in the EU, how it works and what kind of cases are handled by this EU instrument. Lastly, the European Court of Justice cases are analyzed to understand legislative problems connected with the Directive. In the second part, the author uses a comparative method to compare Germany, Sweden, and the United Kingdom. Reasoning why the specific countries are chosen and every example follows a specific agenda. For each country, warranty principles are demonstrated and analyzed why it is like that. With this analysis, the author identifies major differences and reasoning behind it. In the last part, the author takes a different perspective and makes an analysis based on economic values. Transaction costs theory is connected with legal guarantees to understand what losses the consumer face when activating the guarantee.

1. Unveiling the "grey areas" of Directive 1999/44/EC

Directive 1999/44/EC also called Consumer Sales and Guarantees (CSG) directive deal with consumer safety in contracts across the EU granting a minimum level of protection.¹ To everything good, there are always some inconsistencies and situations when legislation is not working as the consumer expects. They are so-called ‘grey areas’. To undermine the problems associated with Consumer Sales and Guarantees directive it is usually mirrored in the cases. In some scenarios, the fault is in the buyer if he is not using the information given to him about the product, but also the seller is liable for false descriptions of a product (non-conformity description). This research will reveal some of the most common situations when it is problematic for the seller or buyer to act according to the law of the EU. One of the most important instruments for consumers in the EU is the European Consumers Centres Network (ECC-net) that helps people all over Europe, but not all cases can be solved by it. The most complicated problems are unveiled by the ECJ when national is contradicting directive incentives or directive is not clear for parties when solving a dispute.

1.1 The background on consumer rights and Directive 1999/44/EC

The European Union is fighting for consumer rights in different fields and it has one of the strongest rules in consumer protection in the world. That is one of the main principles of the EU to protect consumers from risks, threats and faulty information or products. The

¹ Publications Office of the European Union. Study on the Costs and Benefits of Extending Certain Rights under the Consumer Sales and Guarantees Directive 1999/94/EC, available on: <https://publications.europa.eu/en/publication-detail/-/publication/4d120ad5-deee-11e7-9749-01aa75ed71a1/language-en/format-PDF>. Accessed April 9, 2019.

protection of consumers is already laid down in the Treaty on the Functioning of the European Union (TFEU):

In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.²

EU creates legislation for member states to adopt in order to keep high protection for consumers. In the year 1999 EU parliament and the Council created directive 1999/44/EC in order to protect consumers in the sale of consumer goods and guarantees.³ Directive 1999/44/EC is annexed to Directive 98/27/EC which is also about the injunctions for the protection of consumers interests.⁴ EU strives for the best possible protection of the consumers that is why there is a chain of legislation to provide a fair atmosphere for the people of EU in terms of buying and consuming goods or services.

Consumer Sales and Guarantees directive were amended in 2011 by directive 2011/83/EU⁵ adding more to the directive so it would be better foreseeable to a consumer. It requires member states to report any changes to the legislation of guarantees so the EU could forward this information to the people of the EU. It is meant for consumers and traders with the aim that information is easily accessible for everyone involved in the contract of sales. In directive 2011/83/EU, also called the Consumer Rights Directive, harmonizes many key parts for purchases. Mainly it is for dealings between two or more European Union countries. It combines the most important consumer rights in one legislation.

The reason for amending legislation, in general, is to remove inconsistencies and make it easier to understand for sellers and buyers. Compared to 1999/44/EC directive it is a way to encourage countries to trade more because directive 2011/83/EU makes an information obligation before concluding a contract. It means that consumer would be informed about all specifications of a product so there would not be a non-conformity issue. It involves main characteristics of a product, conditions and everything about the delivery time, performance and duration of a contract, termination conditions.⁶ It is a positive influence for consumers and a good addition to directive 1999/44/EC since it is fairly newer and more thoughtful.

² Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XV: CONSUMER PROTECTION - Article 169 (ex Article 153 TEC), OJ C 115, 9.5.2008, p. 124–124. Available on: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A12008E169>. Accessed April 10, 2019.

³ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 10, 2019.

⁴ Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166, 11.6.1998, p. 51–55. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0027>. Accessed April 10, 2019.

⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance OJ L 304, 22.11.2011, p. 64–88. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0083>. Accessed April 10, 2019.

⁶ Publications office of the European Union. Strengthening EU Consumer Rights, available on: http://publications.europa.eu/resource/cellar/32d4a18d-0d02-4703-bd70-b1dcc17236ef.0006.02/DOC_3. Accessed April 11, 2019.

1.1.1 Minimum harmonization principle

Directive 1999/44 introduced addition by laying down the minimum standards for all member states in the field of consumer sales, using the ‘‘minimum harmonization’’ principle.⁷ This gave the opportunity to member states for different approaches, guaranteeing that the basic protection for the consumer is provided and countries can implement the directive in national law with even higher standards. Member states are allowed to create higher levels of protection for the citizens if it was possible or even increasing them later on in the future.⁸ Since every country has different levels of protection, the higher standards sometimes even create disharmony instead of harmony, because some countries are not able to provide their citizens with standards as high as others. Even now the Commission wanted to change the directive 1999/44 by basing the legislation on full harmonization, with the idea that in some countries the established consumer rights would be reduced. Until this day the directive remains untouched and still works on minimum harmonization principle.⁹

The reason for leaving this legislation on minimum harmonization principle could be due to the fact that in some countries warranty standards are already laid down in the national law and they differ from country to country. If EU would harmonize legal guarantee to a constant period then some countries would lose its duration because for example in Sweden the legal guarantee for new and second-hand goods is 3 years¹⁰, but in the majority of countries, it is that minimum 2-year warranty. If the harmonization would lead to 2 years only, then consumers in Sweden result in reduced warranty period. A more drastic change would happen with the United Kingdom where the legal guarantee period is 6 years of warranty for new and second-hand goods.¹¹ For second-hand goods, the warranty period differs in many countries that, for instance, in Portugal¹², Poland¹³ and Italy¹⁴ (and most of EU countries) it can be reduced to one year instead of two. Then again in Estonia¹⁵, Bulgaria¹⁶ warranty for second-hand goods is the same as for new ones of two years. The minimum harmonization principle gives flexibility for countries; the incentive that European Commission aims for one stable

⁷ Hans-W Micklitz et al., *European Consumer Law* (Cambridge: Intersentia, 2014), p. 40.

⁸ Ibid.

⁹ Ibid, p. 170.

¹⁰ European Union. Guarantees and Returns – Sweden, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/sweden/index_en.htm. Accessed April 12, 2019.

¹¹ European Union. Guarantees and Returns – United Kingdom, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/united-kingdom/index_en.htm. Accessed April 12, 2019.

¹² European Union. Guarantees and Returns – Portugal, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/portugal/index_en.htm. Accessed April 12, 2019.

¹³ European Union. Guarantees and Returns – Poland, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/poland/index_en.htm. Accessed April 12, 2019.

¹⁴ European Union. Guarantees and Returns – Italy, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/italy/index_en.htm. Accessed April 12, 2019.

¹⁵ European Union. Guarantees and Returns – Estonia, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/estonia/index_en.htm. Accessed April 12, 2019.

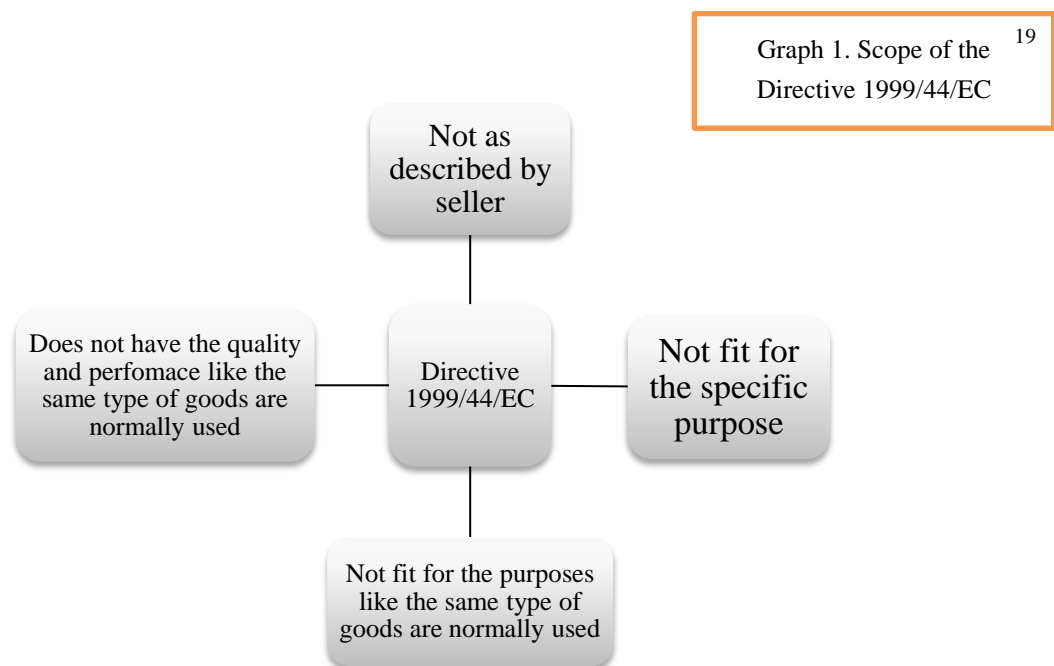
¹⁶ European Union. Guarantees and Returns – Bulgaria, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/bulgaria/index_en.htm. Accessed April 14, 2019.

harmonization could be a very complicated thing to achieve since EU countries have established different warranty standards. It could be very hard to achieve “golden middle” in this situation, so sticking to the minimum harmonization principle seems reasonable. With the 2011/83/EU directive it is a move to

1.1.2 The scope of Directive 1999/44/EC “non-conformity”

The Directive 1999/44 itself is protecting the consumers by setting out that the goods in the European Union are exactly the same as described by the seller, providing the product minimum of 2 years warranty. The consumer is allowed to inquire for repairment, replacement, reduction of price or annulation of contract in case if the goods do not perform its functions properly under the contract. CSG directive has an objective to harmonize the sales contract part that concerns legal guarantees and commercial guarantees.¹⁷

According to Directive 1999/44/EC Article 2 (inter alia), it can be derived that the scope of legal guarantees is applicable when the problem is identified within 2 years after the delivery of goods. If a consumer encounters a lack of conformity within that period there is a reason for justice in the case. Article 2 lists situations when the product is in conformity and from that these are situations when the contract is not in conformity¹⁸.



When looking at the scope of the CSG directive there are fundamental similarities with the text of the United Nations Convention on Contracts for the International Sale of Goods

¹⁷ European Commission. Consumer Sales and Guarantees Directive, available on: https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-sales-and-guarantees-directive_en. Accessed April 13, 2019.

¹⁸ ECC-net. Commercial Warranties – Are They worth the Money, available on: https://www.ecc.fi/globalassets/ecc/ajankohtaista/julkaisut/garanties_final-optimized.pdf. Accessed April 13, 2019.

¹⁹ This graph was made by the author of thesis to picture scope of directive 1999/44/EC.

(CISG) Article 35²⁰. The standards of the quality of goods are harmonized throughout legal text internationally and within Europe. Since CISG is like founding legislation for trade, the European Union probably keeps following the same qualities and what goods should be like when delivered into the hands of the consumer. Otherwise, it would be considered as a breach by CISG or warranty would apply according to the CSG directive. According to this, the EU is making legislation based on something that has actually worked to benefit fair trade, basing legislation on similar principles.

1.1.3 Distinguishing legal guarantee and commercial warranty

CSG directive sets out legislation for two types of warranties, they are different from each other and to conclude any analysis distinguishing them is important. EU has given its definition for these terms and the concept of a legal guarantee of conformity can be found in all EU member states. European Consumer Centers Network (ECC-Net) gives guidance in such definitions.

The legal guarantee is a minimum warranty period of 2 years that is mandatory for all member states. It is as a protection against faulty goods or if they do not look like in the advertisement.²¹

Commercial warranty is an extra warranty that the seller can provide to a consumer. This does not change legal guarantee in any way and a commercial warranty has its price attached to it.²² It can also be included in the price of the product. Commercial warranty is not mandatory by law and not all products are eligible for it. The seller must inform the buyer about such extra and how it would affect the product.

1.2 The role of ECC-net and cases

When there are disputes connected with CSG directive, most of the cases are handled by the European Consumer Centers network. It is a network of consumer centers all over the EU that mainly informs consumers on their rights and what they can do whenever there is a breach of their rights. If there is a dispute when dealing with trade between at least two countries, ECC-net helps to solve it without the involvement of the court.²³ ECC-net gives an opportunity for alternative dispute resolution (ADR), to solve the case out of court so the procedure would not be so complicated and also it reduces the costs.²⁴ Since such cases appear so often, taking every case to the court would lead to a very bad system for consumers and the EU itself. Only the most complicated disputes are taken to the ECJ for a court case and that is where the “grey areas” are unveiled.

²⁰ CISG. United Nations Convention on Contracts for the International Sale of Goods. Available on: <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>. Accessed April 13, 2019.

²¹ European Union. Consumer Guarantees, available on: https://europa.eu/youreurope/business/dealing-with-customers/consumer-contracts-guarantees/consumer-guarantees/index_en.htm. Accessed April 14, 2019.

²² Ibid.

²³ European Commission. VADEMECUM European Consumer Centres' Network (ECC-Net), available on: http://ec.europa.eu/research/participants/data/ref/other_eu_prog/cons/guide/cons-vademecum-ecc-net_en.pdf. Accessed April 14, 2019.

²⁴ European Commission. Alternative Dispute Resolution for Consumers, available on: https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en. Accessed April 14, 2019.

The cases handled by ECC-net institutions are almost anonymous compared to ECJ cases where all the facts, parties involved and proceedings are revealed by the case report. ECC-net cases have only one aim, to give guidance to citizens, solve disputes with the most efficiency, at the lowest costs in situations when the consumer has bought something in another EU country. This network provides services from GIVING information about their rights, giving advice, educating on ways to solve the dispute.²⁵ The most common way to handle cases is ADR. It is safe and easy for the consumer to solve cases with help with ECC-net because people do not have to worry about their private information in such minor cases, it is free of charge and most of the actions in these procedures are done by ECC-net institutions. It sounds like a very positive impact towards consumers, but companies have this tendency to try to dodge rights of the consumer by arguing that their warranty has expired or simply ignoring requests.

1.2.1 Goods were not the same as ordered

There is no database for ECC-net cases like for ECJ with all the procedure details; however, ECC-net institutions carry out case study reports where parties usually are anonymous. Each country has its own European Consumer Centre, to understand what kinds of cases are handled by ECC-net, the best answer can be found there.

Most of the cases handled by European Consumer Centers regarding CSG directive are very simple and consumers that submit a claim get help in a fair and fast method. An example is a case where consumer ordered a product from France and it appeared to not be the product that was ordered. The buyer contacted the seller that he would like to return it, but the seller was not replying to the emails of the buyer. When buyer managed to get information about return, he did not get any refund for it resulting in a situation where there was non-conformity product but no refund. By contacting ECC in France, consumer managed to get the refund immediately after ECC connected with seller.²⁶

Even if it seems normal to get a refund for a product that is not the same order by the buyer, companies tend to ignore the rights of the system we live in. The good thing is that ECC protects consumers in such cases and they react immediately. Most of the companies are providing fair deals and there is no need for involvement of ECC, but as the cases reveal some companies just ignore its customers by not replying or ignoring the rights of the consumer. The aim of it is unclear, whether it is just a mistake of not replying or way to save money on returns.

1.2.2 Repairing product with a fee under warranty

Another example of consumer protection by CSG directive is in the case where a person bought a laptop from an Irish company and the device started to make random shut-downs. The important fact is that it was 18 months after the purchase and when consumer contacted trader the repair free of charge was denied. Trader's argument towards consumer was that his warranty had expired and repair can be made only with an extra charge for it. Consumer

²⁵ Ecclatvia. Privacy Statement to ECC IT Tool, available on: https://www.ecclatvia.lv/images/stories/dokumenti/Privacy_Statement_ecclatvia.pdf. Accessed April 15, 2019.

²⁶ UK European Consumer Centre. Case Study – Incorrect goods received, available on: <https://www.ukecc.net/news/cs-news-item.cfm/newsid/3221>. Accessed April 15, 2019.

thought that something is not right in this situation since the problem is hardware failure and not his fault, so he contacted ECC for help. There was, in fact, a problem because the warranty has not ended for consumer and trader was obliged to repair the laptop free of charge.²⁷

In this case, the trader again tried to make a benefit for themselves by not granting free repair of the product and even claiming that the warranty has ended after 18 months. Under CSG directive the minimum warranty of the product is 2 years (24 months) granting legal rights to the consumer of free repair in case of hardware issues and problem not caused by the consumer. It does not seem fair that some people who do not contact ECC in such cases may be tricked by companies and result in paying extra money, even though they have full rights in the EU for a legitimate repair free of charge or even getting a brand new product if the hardware issues are not repairable (if it is not the fault of consumer of course).

1.2.3 Returning goods with a full refund

In the case where Irish citizen bought a laptop from an online retailer based in the United Kingdom, consumer noticed several defects that developed by themselves and it was no fault of the buyer. Irish consumer insisted for a repair and there were two unsuccessful repairs. After that, the consumer insisted that he had lost any confidence in the product and wanted to have a full refund back in the money of the amount paid. The seller again wanted to do another try by repairing it, but the buyer contacted ECC. The result was that by granting the documents of technical reports attempts that they both were unsuccessful, the trader then agreed to give a full refund when the product is sent back to the seller²⁸

The consumer had no belief that product would be repaired with the 3rd attempt and he just wanted to get his money back. At first, the seller was not happy about it and wanted to send it to the manufacturer to repair the item once again. In every case that was looked at the seller always tries to avoid consumer from exercising their rights at first. But when ECC gets involved they always seem to have no problem with it and that is the reason why ECC is necessary for the EU consumers. Of course, business is there to earn money, but they cannot be so ignorant to avoid their customer's rights. This is one of the problems even unveiled by the ECC-net that consumers always should take advice and then act since in some cases companies make false statements about warranty length or legitimate possibilities consumer can make.

1.3 Grey areas according to the European Court of Justice regarding directive 1999/44/EC

The cases regarding CSG directive rarely are handled by ECJ since most of the cases are settled by ECC-net or national courts. Court of Justice only solves disputes if there are significant issues and help is needed in the interpretation of CSG directive. Those are the situations when ECJ can provide the best answer since it is an official body of the EU.

²⁷ European Consumer Centre Ireland. Case Studies, available on: <https://www.eccireland.ie/popular-consumer-topics/consumer-rights-buying-goods-services/case-studies/>. Accessed April 17, 2019.

²⁸ ECC-net. Commercial Warranties – Are They worth the Money, available on: https://www.ecc.fi/globalassets/ecc/ajankohtaista/julkaisut/garanties_final-optimized.pdf. Accessed April 18, 2019.

National courts cannot interpret law exactly as it is meant and then ECJ gives answers to the questions inquired in case.

The case C-404/06 *Quelle*²⁹ is one of the examples where proper interpretation was needed. In this case, the buyer was Ms. Brünig and she ordered a stove-set from Quelle. After 2 years of use, she noticed that it did not look right and was not in conformity and it could not be repaired so she returned it to get a replacement. There was no problem with replacing it, but Ms. Brünig had to pay compensation of EUR 69,97 for the benefit she got from using the stove-set. She was not happy about it and demanded a refund of that amount and so Quelle would not ask for reimbursement of non-conformity product. Ms. Brünig managed to get a refund, but the court denied claims about Quelle and reimbursements of non-conformity since interpretation was needed.³⁰

The issue, in this case, is that directive 1999/44/EC³¹ is contradicting norms of the German Civil Code (BGB)³². The question was how to interpret the directive and whether it precludes the BGB in this case. In this situation, national legislation is going against the norms of the EU. According to the German Civil Code Paragraph 439(4)³³ seller can inquire the consumer to pay compensation for the use of goods, but CSG directive allows consumers to get a replacement for the non-conformity goods. There is an opinion by AG Trstenjak on this issue that there is a real issue regarding BGB and the right to compensation in the EU. He inquired that:

In German legal literature, the question whether the right to compensation for use is well founded has provoked wide academic discussion.³⁴

Advocate General Trstenjak is giving his opinion that BGB specific legislation is not quite well founded since EU norms can go against it in such a specific situation. This legislation basically is on the seller's side because economic benefits are gained for the seller and not a consumer if a replacement is needed. There are arguments that German legislation conflicts directive 1999/44/EC and is not in line with it like EU legislation should be implemented into national law. EU law has supremacy over national legislation and everything should be in line, but here, critically thinking, it is one-sided nature, that seller will gain profits from making such trade deals.³⁵

In the end, the court held that national legislation, in this case, was precluded from setting out an obligation for the consumer to hand out compensation for using goods of the seller that are not in conformity.³⁶ EU law is above national law and to gain adequate consumer protection precedent like this was set. The “grey area” here is that national law provisions are not

²⁹ Court of Justice: Judgement in *Quelle*, C-404/06, ECLI:EU:C:2008:231.

³⁰ *Ibid.*, para. 14.

³¹ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 19, 2019.

³² Germany. German Civil Code BGB. Available on: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Accessed April 20, 2019.

³³ *Ibid.*

³⁴ Court of Justice: Opinion of Advocate General Trstenjak on *Quelle*, C-404/06, ECLI:EU:C:2007:682, para. 38.

³⁵ *Ibid.*

³⁶ European Union. Consumers are not required to pay compensation to sellers for the use of defective consumer goods until their replacement. Available on: http://europa.eu/rapid/press-release_CJE-08-28_en.pdf. Accessed April 21, 2019.

aligned precisely with the Directive and seller should not make a financial gain on behalf of warranty because it does not result in fair consumer protection.

In Case C-65/09³⁷, there was a similar issue regarding Directive 1999/44/EC and consumer protection. In the case of C-65/09, there was a contract concluded by Mr. Wittmer and Weber about tiles in the house for a price of EUR 1382,27. Mr. Wittmer laid the tiles into his house and then noticed a visible defect. After making a complaint it was calculated that complete replacement would lead to a cost of EUR 5830,57. Mr. Wittmer filed an action against Weber to pay the full amount, however, the court dismissed the action. On appeal Mr. Wittmer ordered Weber to deliver a new set of tiles without any defects and also make a payment of EUR 2122,37 to remove the defective ones, it was dismissed again.³⁸ The role of ECJ is when Federal Court of Justice observed term ‘‘replacement’’ in Directive’s Article 3(2)³⁹ as delivering goods in conformity and also replacing the defective ones. That would mean that the company would have to go to Mr. Wittmer’s house and do the removal of tiles bearing the costs. The help of ECJ was needed to help interpret the specific Article of the Directive.

In the case C-65/09 the problem again was with national provisions and the text of the Directive 1999/44/EC. How it should be interpreted because according to BGB Paragraph 439(3)⁴⁰, the seller can refuse to make a replacement if the costs would result in a disproportionate amount. The price of tiles was EUR 1328,27 and plaintiff demanded EUR 5830,57 so the amount of money in this situation is disproportional. On the other side Directive Article 3(3) states:

In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case, free of charge, unless this is impossible or disproportionate.⁴¹

The Directive needs interpretation this situation because there is a factor of ‘‘disproportional’’ or ‘‘impossible’’. The question is whether it is disproportional according to the directive because it surely is not impossible to fix the problem. The seller was not in the fault of placing the tiles in the first place that is why this situation is so specific. ECJ explained the situation that again national legislation should be precluded and Article 3(3)⁴² interpretation is that replacing goods not in conformity or bearing costs of the situation is only remedy possible. Otherwise, it would impose disproportional costs to the consumer because of a lack of conformity in goods. On the other hand, it imposes disproportional costs on the seller. This does not preclude consumer rights for a replacement of goods not in conformity⁴³. National legislation could lead to the irresponsibility of the seller is what the court said.

There is major significance in this case since the EU has a principle of proportionality. In this situation, it is not proportional to a seller. There is a considerable risk and should seller raise

³⁷ Court of Justice : Judgment in Joined Cases C-65/09 and C- 87/09, ECLI:EU:C:2011:396.

³⁸ Ibid, para. 18.

³⁹ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 21, 2019.

⁴⁰ Germany. German Civil Code BGB. Available on: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Accessed April 21, 2019.

⁴¹ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 21, 2019.

⁴² Ibid.

⁴³ Court of Justice : Judgment in Joined Cases C-65/09 and C- 87/09, ECLI:EU:C:2011:396, para. 21.

the prices of goods because of it? The opinion of AG Mazak makes an opposite evaluation of the situation than the court gave. He tried to balance the situation for both parties. AG Mazak agreed with standing point of Germany that paying the demanded amount by the opposite party, in this case, would lead to absolute disproportionality. The seller would have to pay an amount of money that considerably exceeds the price of sold goods.⁴⁴ The court introduced relative proportionality where the costs could be reduced, but still, it does not change the situation that it is not completely proportional. This case makes an inconclusive methodology of handling consumer protection and the principle of proportionality. There is no clearance whether it is the aim of Directive to go that far with on side of the consumer. Installation was done by the buyer and now the seller had to take care of the situation individually, it seems one-sided. C-65/09 leaves precedent that seems inconsistent with some norms of EU and there may be more cases in the future that could lead to notable critics of this case judgment. The problem is also how the principle of proportionality interacts with consumer protection because it now can be seen as an obstacle.⁴⁵

1.4 Concluding part 1

The general objective of Directive 1999/44/EC is to protect consumers of the European Union and it has created an admirable system to handle day to day cases with ECC-net all over EU. People have the opportunity to find justice in a very easy method that does not cost them anything by making claims to the European Consumer Centre of their region. ECC-net case studies have proven that they are the best way to solve disputes when uncertainty between the seller and the buyer is identified. Even in case of a claim, the data of consumer is protected and not public.

The approach of minimum harmonization principle is an interesting way to implement the directive in different EU countries that already have a foundation in warranties. It has a more positive impact because all countries have one minimum standard but the ones with higher warranty principles are not harmed by the Directive. Every country has a chance to make warranty standards higher so there is a potential to grow. The EU has had initiatives to turn this principle in standard harmonization; however, minimum harmonization principle seems to work very well in our system.

With that being said, there are also ‘grey areas’ connected with the Directive. ECC-net cases made it clear that there are situations when companies that distribute goods sometimes try to take advantage of the unconscious consumer who has no clearance over his rights. In some cases, the seller will try to avoid making free of charge repairs or replacements, although those are rights granted by the Directive. Sometimes consumer gets ignored by the seller and then might feel stuck that there is no way of justice, but this is what the EU is fighting for, to grant fair consumer protection. Every consumer has to be aware of each contract to not get fooled and always seek advice from ECC-net where most of the cases are settled.

The deeper perspective of ‘grey areas’ regarding CSG Directive underlays in the cases of ECJ. The problems revealed by cases have a far more considerable influence and they have a

⁴⁴ Thomas Hoffmann, "The Weber/Putz 'Proportionality Principle': Determining Subsequent Performance Anew?" *Croatian Yearbook of European Law and Policy* 10, no. 10 (2014), accessed April 23, 2019, doi:10.3935/cyelp.10.2014.175.

⁴⁵ Ibid.

different meaning to other member states of the EU. One of the issues is when national law provisions collide with the Directive. Just like in case of C-404/06 *Quelle* the laws of Germany were not in conformity with the Directive and it creates an issue where ECJ has to decide how to make a judgment. The simple answer is that the EU law is above national law and national provisions are precluded, but if the Directive is implemented in the specific country, how can an issue like that arise. More significance is in C-65/09 - *Gebr. Weber and Putz* where national law provisions and Directive had similarities but the court ruled not based on the proportionality principle completely. It created an issue that the seller was not treated proportional and had to bear costs that exceeded the amount of the price of goods. Even though relative proportionality was introduced, that costs are reduced, it did not treat the seller's side appropriately. The opinion of AG and other member states had opposite opinions in the case, but the court ruled favoring consumer on the extent that it is more than proportional. The seller had to bear the costs of the buyer for actions that the seller was not responsible for, displacement of tiles in this case. The problem is that such case sets precedent for further cases of conflict. Was it the aim of Directive to go this far on the buyer's side and the seller has to think about such risk?

The founding principle of proportionality is creating an obstacle to consumer protection in this example and the EU has to think of a way to make a solution. There should be a balance between consumer and seller otherwise it can create more problems. If companies have to think about such risk then maybe it could influence the prices of goods in a specific situation to eliminate such risk. The objective of Directive is absolutely needed in our society but it needs a proper approach to not create disbalance for further disputes as well.

2. The comparison of directive 1999/44/EC standards between different countries within the European Union

Each member state of the European Union has an obligation to implement legislation set out from the EU into national legislation. As it is with Directives it up for every country within the union how they base their laws on the Directive to reach goals set out by it.⁴⁶ The main goal of Directive 1999/44/EC is consumer protection and to strengthen it. Consumer sales and guarantees directive are unique due to its minimum harmonization principle. That is something special because most of EU rules have the aim of creating common standards across the union, but minimum harmonization principle gives the opportunity to have flexible legislation based on the country's capabilities. The ones with higher standards do not have an obligation to lower them because of this principle and they can go beyond the minimum rules set out by directive⁴⁷. If there was a regular harmonization principle then it would be hard to decide what could be the most appropriate rule on standards of warranties. Most of the EU countries are sticking to that minimum of 2 years legal warranty on goods.

⁴⁶ European Union. Regulations, Directives and other acts. Available on: https://europa.eu/european-union/eu-law/legal-acts_en. Accessed April 24, 2019.

⁴⁷ Publications Office of the European Union. Study on the costs and benefits of minimum harmonisation under the Consumer Sales and Guarantees Directive 1999/44/EC and of potential full harmonisation and alignment of EU rules for different sales channels. Available on: <https://publications.europa.eu/en/publication-detail/-/publication/358f6bb9-9ac0-11e8-a408-01aa75ed71a1/language-en/format-PDF>. Accessed April 25, 2019.

The comparison of CSG Directive is valuable because of differentiation in terms of legislation between member states of the EU. The aim of comparing countries in this aspect is to understand to what extent the differences can be and what complications when implementing this directive are. From the comparison, it can be understood what could be the consequences of changing from minimum harmonization to regular harmonization like it is with most legislation within the EU.

The chosen countries that are compared are Germany, Sweden, and the United Kingdom. The analytic frame here is that those three countries are in different regions of Europe and another factor is that they are considerable in size, GDP and influence in the EU. There is no doubt that other examples can be taken and compared because of different lifestyles, cultures, and traditions, but here the most important aspect is the region and to take the most substantial countries from different parts of Europe. Germany, Sweden, and the United Kingdom are great examples of displaying to what extent the minimum harmonization principle can go because standards of warranty are diverse. Germany is one of the leaders in central Europe and it has a close history with the creation of the EU. Sweden had always its own relationships with other countries in ‘Nordic’ region where legislation was made jointly before the EU. United Kingdom

2.1 Germany

Germany is one of the compared countries because of being one of the initial founders of the European Union.⁴⁸ Germany joined the EU in 1958⁴⁹, is one of the first of the countries to enter the union from compared countries in the comparison. This is a great example because it reveals how a country that was the initiator of the EU economic union acts nowadays, also Germany is located in central Europe gives example to all other countries and is very influential. There is significance with Directive 1999/44/EC in German legislation because there were a lot of changes in BGB. It is due to the fact that before any European Directives Germany had no special consumer protection laws.⁵⁰

Throughout this process, Germany made a lot of changes in their legislation, but as it is apparent in cases regarding CSG Directive, it is still not perfect, since some of the provisions may have the effect of contradiction with text set out by the Directive, like in case of C-404/06 *Quelle*⁵¹. With the Directive and the EU, a principle of proportionality, minimum harmonization move along and specifically like in case law creates some obstacles for the EU when deciding on disputes in contracts of sale. When Directive was implemented Germany used minimum harmonization requirements, but generally previous already existing provisions of the German sales law and CISG were adjusted.⁵²

⁴⁸ European Union. The history of the European Union. Available on: https://europa.eu/european-union/about-eu/history_en#1945-1959. Accessed April 26, 2019.

⁴⁹ European Union. Countries. Available on: https://europa.eu/european-union/about-eu/countries_en#tab-0-1. Accessed April 26, 2019.

⁵⁰ Martin Ebers, Christian Twigg-Flesner, and Hans Schulte-Nölke, *EC Consumer Law Compendium: The Consumer Acquis and Its Transposition in the Member State* (Munich, Germany: Sellier European Law Publishers, 2008), p. 32.

⁵¹ Court of Justice: Judgement in *Quelle*, C-404/06, ECLI:EU:C:2008:231.

⁵² Peter Rott, "German Sales Law Two Years After the Implementation of Directive 1999/44/EC," *German Law Journal* 5, no. 3 (2004):, accessed April 26, 2019, doi:10.1017/s2071832200012414.

2.1.1 Warranty principles in Germany

The implementation of the CSG Directive reached specific principles on legal guarantees. With the use of minimum harmonization, Germany now has that lowest amount of 2 years of legal guarantee on regular, new goods, but it can be reduced to 1 year if it is a second-hand good.⁵³ While Germany is one of the ‘‘big players’’ in the EU, the minimum principle is used and there is no extra duration for guarantees. Most of the EU countries have a 2-year guarantee, because of their existing laws on consumers or some smaller countries follow the example of countries such as Germany. There are countries where it would be unfavorable to raise standards higher, but Germany is a very successful country that could even have higher standards. Germany is one of Europe’s most industrialized and populous countries with many achievements⁵⁴ so it would not be a bad example for others to have higher standards.

When the product turns out to be defective or not in conformity like described by the seller, the retailer takes responsibility for it.⁵⁵ Of course, there are situations when the seller just ignores consumers on such cases as it is according to ECC-net case studies, but most of the time the obligation to take responsibility is not ignored. This duty has an effect of notification within the period of 2 years from delivery of goods.⁵⁶ The seller has the opportunity to prove that item was not defective for the first 6 months after the delivery, on another hand the consumer must prove the opposite if there is a defect.⁵⁷ If there is a dispute about any defect, then the consumer has a chance to get clearance from ECC of Germany where all necessary help is provided. If the attempt is successful either ECC-net handles situation or the seller agrees to make a replacement, repair, refund or reduction of the purchase price.⁵⁸ The period to take action is 2 years (1 year for second-hand goods) for both parties involved. The consumer is entitled to remedy in a hierarchical method, which firstly repair or replacement is granted, only at the second attempt refund or price reduction.⁵⁹

Directive 1999/44/EC also has laid down provisions on commercial warranty. All responsibility is taken into the seller’s competence. Only the seller can offer such extra product for additional price or whatever terms are decided upon contract, in some cases, it can be free of charge. The most common warranty period is from 1 to 5 years depending on the

⁵³ European Union. Guarantees and Returns – Germany, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/germany/index_en.htm. Accessed April 12, 2019.

⁵⁴ BBC. Germany country profile, available on: <https://www.bbc.com/news/world-europe-17299607>. Accessed April 27, 2019.

⁵⁵ European Union. Guarantees and Returns – Germany, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/germany/index_en.htm. Accessed April 12, 2019.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ European Consumer Centre France. Germany, available on: https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-GUARANTEE/country_fact_sheets/Country_fiche_DE.pdf. Accessed April 28, 2019.

⁵⁹ European Union. Guarantees and Returns – Germany, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/germany/index_en.htm. Accessed April 12, 2019.

product's value. If goods are very expensive then the seller can offer an even longer warranty.⁶⁰

2.1.2 Implementation of Directive 1999/44/EC

The implementation of the CSG Directive made major reform to the German contract law⁶¹. The transposition was made with "Act on the Modernization of the law of obligations"⁶². Germany had a method of three phases until CSG Directive was implemented into national law. On the third phase Terms of the Directive were implemented in BGB. Example of this is the definition of "consumer" described in BGB Paragraph 13⁶³:

A consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or profession.⁶⁴

The same is with the definition of "producer" in BGB Paragraph 4⁶⁵, so the main definitions are transposed so when issues occur, there would not be extra interpretation needed. The definitions were directly implemented from Article 1 of the CSG directive⁶⁶. The problem arises when there are non-conformity goods and this is described in the Directive and in BGB it is explained in Paragraph 433⁶⁷ that the seller has the obligation to deliver goods free from material and legal defects. Regarding conformity with the contract also Paragraph 434⁶⁸ about material defects and 435⁶⁹ on legal defects makes remarks to the Directive.

CSG Directive's Article 3(3)⁷⁰ about rights on replacement or refund of the product is expressed in BGB Para 439 and Para 275. If replacement or refund is impossible or disproportionate then there is right when providing a remedy to refuse. This is contradicting what has happened in the case C-65/09 - Gebr. Weber and Putz where the ECJ ruled opposite like the directive actually states. Although the Directive is implemented into Germany's law, there still are challenges and confusion about specific situations.

⁶⁰ European Union. Guarantees and Returns – Germany, commercial warranty, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/germany/index_en.htm#shortcut-2-commercial-warranty. Accessed April 28, 2019.

⁶¹ Stefan Grundmann, 'European Sales Law — Reform and Adoption of International Models in German Sales Law' (2001) 9 European Review of Private Law, Issue 2/3, pp. 239–258. Available on: <https://www.kluwerlawonline.com/abstract.php?area=Journals&id=359019>. Accessed April 28, 2019.

⁶² Publications Office of the European Union. Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU. Available on: http://publications.europa.eu/resource/cellar/863bdc8b-02cd-11e6-b713-01aa75ed71a1.0001.01/DOC_1. Accessed April 28, 2019.

⁶³ Germany. German Civil Code BGB. Available on: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Accessed April 28, 2019.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 21, 2019.

⁶⁷ Germany. German Civil Code BGB. Available on: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Accessed April 28, 2019.

⁶⁸ Ibid, para. 434.

⁶⁹ Ibid, para. 435.

⁷⁰ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0044>. Accessed April 21, 2019.

The legal guarantee period is also mentioned in the BGB Paragraph 475⁷¹ that rights of guarantee lasts for 2 years from the delivery date.⁷² To understand better to what extent BGB was changed because of this Directive the author of this research made a table.

Table 1. Implementation of Directive 1999/44/EC⁷³

Implementation of Directive 1999/44/EC into German legislation		
Article of Directive	Description	Change in BGB
1.2 (a)	Definiton of Consumer goods	Paragraph 474 (1)
1.2 (b)	Definition of Consumer	Paragraph 13
1.2 (c)	Definition of Seller (entrepreneur)	Paragraph 14
1.2 (e)	Definition of Guarantee	Paragraph 443
1.4	Types of sale contracts	Paragraph 474 (1)
2.1	Requirement of Conformity	Paragraph 433
2.2	Good Conformity	Paragraph 434 (1)
2.3	Lack of Conformity	Paragraph 442
2.4	Seller Statements	Paragraph 434 (2)
2.5	Installation	Paragraph 434 (2)
3.1	Liability	Paragraph 437
3.2	Remedies	Paragraph 437
3.3	Conditions	Paragraph 439
3.4	Free of Charge	Paragraph 439
3.5	Reduction of the price	Paragraph 441
3.6	Contract rescission	Paragraph 323
4	Final seller liability	Paragraph 478
5.1	Time period	Paragraph 475
5.3	Reversed burden	Paragraph 476
6.1	Legally binding	Paragraph 443 (1)
6.2	State rights and contents	Paragraph 477 (1)
6.3	Written contract	Paragraph 477 (2)
6.4	Language of guarantees	Paragraph 477 (2)
7.1	Restricted rights	Paragraph 477 (3)

There is an assumption about how much German sales law has changed and shifted towards a modernized model that is simpler and consumer-friendly due to the changes in the national law of Germany because of the Directive.⁷⁴ In overall perspective those are positive changes, however, there are also situations when problems arise with respect to ECJ and receiving

⁷¹ Germany. German Civil Code BGB. Available on: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Accessed April 28, 2019.

⁷² Publications Office of the European Union. Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU. Available on: http://publications.europa.eu/resource/cellar/863bdc8b-02cd-11e6-b713-01aa75ed71a1.0001.01/DOC_1. Accessed April 28, 2019.

⁷³ This table was created by the author of thesis to mirror changes into BGB in respect to Directive 1999/44/EC.

⁷⁴ Peter Rott, "German Sales Law Two Years After the Implementation of Directive 1999/44/EC," German Law Journal 5, no. 3 (2004): , accessed April 29, 2019, doi:10.1017/s2071832200012414, p. 237.

some critics from academics. There are three different opinions about this, firstly group of academics that try to read the new BGB in light of old rules, secondly the ones that really welcome this directive as an improvement for everyone in Germany and thirdly group that criticizes Directive 1999/44/EC because it has a lot of similarities with CISG and new German sales law should be looked at in regards with international case-law on the CISG.⁷⁵

Consumer protection development in Germany had a specific technique to it. There was a gradual process until Germany reached consumer rights goal within the union. The legislative technique divided into three phases. In the first phase, Germany modified the existing laws based on the directive. Doorstep Selling Cancellation Act and existing rules on travel contracts were transposed according to the applicable directives. In the second phase, German legislators endorsed more Acts that followed the EU guidelines.⁷⁶ The strategy ended with the third phase when Germany modernized the law of obligations in regard to Directive 1999/44/EC. All previous legislation regarding consumer protection was amended by the new one. There was a gradual order until consumer rights were fulfilled in Germany. The importance of this example is that not only consumer rules were changed but all sales contracts became protected.⁷⁷ One of the most distinctive qualities is that also business to business contracts are protected, having some stricter rules on the consumer to businesses.⁷⁸

2.2 Sweden

Sweden is one of the examples because of success factors in northern Europe's region. Other member states can always look at a good example of how Sweden treats its citizens and it has a very high quality of life.⁷⁹ 1995 was the year when Sweden decided to join the union⁸⁰ and is the "youngest" of the examples in the comparison. Also, there is a family of "Nordic" countries (Denmark, Finland, Iceland, Norway, and Sweden) that share the history of creating similar legislation. There were discussions together between countries about what kind of legislation to create⁸¹. This takes an effect on the creation of consumer protection laws as well. Germany compared to Sweden had a different approach in regards to Directive 1999/44/EC. Sweden can also be considered as a precursor of consumer protection. From early on consumer protection had already advanced as a separate branch⁸² alongside with their general law, unlike Germany where a lot of change was made to their existing legislation.

Before the CSG Directive was implemented, Sweden already had their instrument of judicial protection in market court in cases of consumer protection. The market court was exclusive to consumer protection matters and also the highest court in such matters so there was no chance

⁷⁵ Ibid, p. 256.

⁷⁶ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium, p. 32.

⁷⁷ Ibid, p. 33.

⁷⁸ *Businesseurope. Comparative report on transposition*, available on: <https://www.businesseurope.eu/sites/buseur/files/media/imported/2004-01158-EN.pdf>. Accessed April 30, 2019.

⁷⁹ OECD Better Life Index. Sweden, available on: <http://www.oecdbetterlifeindex.org/countries/sweden/>. Accessed May 1, 2019.

⁸⁰ European Union. Countries, available on: https://europa.eu/european-union/about-eu/countries_en#tab-0-1. Accessed May 1, 2019.

⁸¹ Juridica International. Application of General Principles in Private Law in the Nordic Countries, available on: <https://www.juridicainternational.eu/index.php?id=15316>. Accessed May 1, 2019.

⁸² Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium, p. 73.

of appealing.⁸³ Transposing CSG Directive was not an obstacle for Sweden due to already existing concepts of consumer protection and even judicial mechanism for disputes.

With high consumer protection, it is also connected with environmental protection. In Sweden, both aspects of protection are associated since businesses have to think about creating products that do not break easily that means that there are less waste and better quality for products. There are two aspects to this, firstly it is discussed that making standards higher have environmental benefits of reduction in waste and promotion of more durable products, secondly, businesses argue that it leads to higher costs for businesses. This could be one of the reasons why Sweden is so environmentally friendly, also the government's plan for 2018 was to change the way its society uses and consumes resources. The government pointed out that everyone should benefit from both consumers and producers.⁸⁴

2.2.1 Warranty principles in Sweden

Impact of CSG Directive and their existing history in consumer law in Sweden has made very prosperous consumer protection. Unlike Germany and most of the EU member states, Sweden has higher standards in guarantees. Although Sweden had to follow the same "minimum harmonization principle", the period of legal guarantee is 3 years for new and second-hand goods.⁸⁵ Germany has a possible situation that second-hand goods would have only 1 year of the legal guarantee. This shows an aspect of the possible reason for a better quality of life since consumer protection is at a higher level as well. 3-year guarantee seems like one of the possibilities if the EU makes initiative for uniform rules. This would mean that 23 member states would have to already higher the level of consumer protection.⁸⁶

In the case of a defective product, the seller is responsible for putting things right. That also accounts for all purchases that are made online. While the legal guarantee is 3 years but the ideal is to detect a defect within a reasonable time. The complaint that follows the realization of the defect within 2 months after delivery is considered as a reasonable time. There is nothing wrong if the complaint is made longer period after noticing that something is wrong with the product but then more attention is brought to investigation and proving the claim. Like in Germany the seller is responsible for proving that it was not defective within 6 months after the delivery, but the consumer must prove the opposite.⁸⁷ A specific legal guarantee is provided by national law of Sweden that for immovable property defects it has 10 years of the legal guarantee. There are no such extras in German consumer protection provisions,

⁸³ Ibid, p. 74.

⁸⁴ Government Offices of Sweden. The Swedish Government's overall EU priorities 2018, available on: <https://www.government.se/492bb8/contentassets/c9a591d4423f478fa6d8ce00f5dbeba7/the-swedish-governments-overall-eu-priorities-for-2018.pdf>. Accessed May 2, 2019.

⁸⁵ European Union. Guarantees and Returns – Sweden, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/sweden/index_en.htm. Accessed May 3, 2019.

⁸⁶ Publications Office of the European Union. Study on the costs and benefits of extending certain rights under the Consumer Sales and Guarantees Directive 1999/94/EC, available on: http://publications.europa.eu/resource/cellar/4d120ad5-deee-11e7-9749-01aa75ed71a1.0001.01/DOC_1. Accessed May 4, 2019.

⁸⁷ European Union. Guarantees and Returns – Sweden, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/sweden/index_en.htm. Accessed May 3, 2019.

however, that is due to the fact that Germany's consumer laws are fairly new compared to Sweden's.

There, of course, is a third party body because of obligation from the EU, it is called ECC in cases when better understanding and solving of matters is needed. All of Europe's countries have this opportunity to get help. Already before CSG Directive's implementation, Sweden had their mechanism of consumer protection called Consumer Ombudsman⁸⁸, it was Nordic legal system body. Before ECC-net Sweden's cases took place in Market court. In Germany, this was a missing field, but Sweden already thought in advance for the well-being of their consumers. The consumer has an option to take action against anyone in the chain (supplier or importer, etc.) if there is no possibility to contact the actual seller. The period of taking the seller to court is 10 years after the delivery; however, the trader can take action only 3 years.⁸⁹ There is a major difference between Sweden and Germany in this aspect because consumer rights are more extended. The consumer can even make a claim against the seller 7 years after the legal guarantee has ended, however, that is only if within the guarantee period no solution was found.

There are specific rules for remedy in Sweden that has a sort of hierarchy. When a defective product is brought back to the seller first thing that would be offered is repair or replacement within a reasonable time and free of charge.⁹⁰ Full refund or reduction in price is the second attempt in the hierarchy; however, if there is significant material loss the consumer may claim full refund immediately. In case if repair is impossible a full refund is also an immediate option.⁹¹ It has to be added that all proceedings must be in a reasonable time.

Regarding commercial warranty, in Sweden, the seller, the producer or there may be a third party that provides it. The periods are 1 to 5 years, but in most cases, it is 2 years like for legal guarantee⁹², it is the same as in Germany. The same principles apply to price, that it can be free of charge if the seller sets out such condition. Commercial warranty is more decided upon the seller's side either in Sweden and Germany.

2.2.2 Implementation of Directive 1999/44/EC

Sweden has thought about protecting consumers already before joining the EU. First official legislation on consumer protection appeared in Swedish Contract Act, it made adjustments to civil law and there were administrative methods to improve consumer protection from early on. Another step towards consumer protection was the Consumer Contract Terms Act on unfair terms that helped later on to implement the CSG Directive⁹³. Before ECC-net was created, Sweden had Complaints Board where disputes were solved in a fast method. And finally the general purchase Act⁹⁴ had an effect on consumer protection directly and it made

⁸⁸ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium , p. 74.

⁸⁹ European Union. Guarantees and Returns – Sweden, available on:

https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/sweden/index_en.htm. Accessed May 3, 2019.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium , p. 74.

⁹⁴ Ibid.

implementation fairly easy since a lot of ground was created even before the EU laid down its rules for adoption. Directive 1999/44/EC was transposed in Consumer purchase Act⁹⁵

The difference between Germany and Sweden in regard to implementation is that Germany had many changes to their BGB; however, Sweden had a legislative technique of transposing via Acts of Parliament⁹⁶. Because of history in consumer protection already before joining the EU, Sweden had to do only minor amendments to their existing legislation. Germany's technique seems more complicated and took more time to adapt to the Directive. In Sweden, Directives were implemented without a problem within good time. Some of the rules were there already before accession and that is why Sweden is a good example for other countries.

2.3 United Kingdom

The final example of this comparison is the United Kingdom because of different location from previous examples, being located completely alone in Europe and the UK's legal system is also distinct. The United Kingdom is ruled by common law; however, Germany and Sweden are civil law. In 1973 the UK joined the union⁹⁷, even though Germany did it faster, they had major changes into their legislation in regards to implementing of the Directive. Just like Sweden the UK had already established some provisions on consumer protection. It was a topic already before any European initiatives⁹⁸, meaning that pre-existing legislation did not place many obstacles to implementing Directive 1999/44/EC. Germany had almost no previous foundation in consumer protection and there were a lot of changes to their laws, Sweden just had to do adjustments just like the UK.

One of the most important points regarding the UK is its decision to withdraw from the European Union. There still is a lot of uncertainty about what is really going to happen with every foundation that the EU has made between every member state. The withdrawal complicates the whole system because it affects every aspect of consumer protection and trade as such. The UK has once again extended the withdrawal period until 31 October 2019⁹⁹, it shows the ambiguity for this decision. Not only relationships between the EU and national authorities are affected but also private parties would have some obstacles towards the UK, since leaving the union would make the UK a "third country"¹⁰⁰. This means that all general rules from the EU regarding consumer protection would no longer be applied in the United Kingdom¹⁰¹. Most of the disputes are solved online in out of court method by ECC-net, this would also be gone and the UK has a lot to lose if nothing changes.

⁹⁵ Ibid, p. 73.

⁹⁶ Ibid, p. 74.

⁹⁷ European Union. Countries, Available on: https://europa.eu/european-union/about-eu/countries_en#tab-0-1. Accessed May 4, 2019.

⁹⁸ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium, p 77.

⁹⁹ BBC. Brexit: All you need to know about the UK leaving the EU, available on: <https://www.bbc.com/news/uk-politics-32810887>. Accessed May 4, 2019.

¹⁰⁰ European Commission. Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights, available on: <https://ec.europa.eu/transport/sites/transport/files/legislation/brexit-notice-to-stakeholders-consumer-protection-passenger-rights.pdf>. Accessed May 4, 2019.

¹⁰¹ Ibid.

2.3.1 Warranty principles in the United Kingdom

Directive 1999/44/EC has established certain rules on warranties in the UK. If Germany has the most basic 2-year warranty (minimum); Sweden adds a little extra being with a 3-year warranty; the United Kingdom has gone absolutely over the minimum standards having 6 years in England, Wales and Northern Ireland, but 5 years in Scotland¹⁰². There is diversity between the UK's internal regions in regards to warranty. There are many areas that Scottish and English law has decided to be exact, but also in many cases, they have differences. That is because of the history of English law that is applicable in England, Wales, Northern Ireland, and Scottish law that applies in Scotland¹⁰³. The warranty is applied to new and second-hand goods and just like in Germany and Sweden, the seller is responsible for sorting matters out.

One of the differences is that in the UK if the consumer bought something with his credit card, he is able to make claims against the credit card or finance companies when the value of goods is from 100 GBP to 30000 GBP. This is because of written law in the UK Consumer Credit Act 1974, Section 75¹⁰⁴ that if the consumer pays for goods starting from 100 GBP and something goes wrong the provider (bank or financial instrument) is also liable for that¹⁰⁵. The notification of defect should be realized within a reasonable time just like in previous examples, but there is no real deadline other than the legal guarantee of 6 years and 5 years in Scotland, the seller must prove that item is not defective and the consumer has to do the opposite.¹⁰⁶ There is also a chance that the consumer involves a third party, for example, an expert in electronics that he has given consent that item is defective; however, it might not be accepted by the seller. This is evidence of a defective product that usually is taken into account in the court. Regarding remedies in the UK under the Consumer Rights Act 2015¹⁰⁷ the consumer has the right to reject the faulty item if it occurs within 30 days. In Germany and Sweden, it is different from the aspect that entitlement to remedy is obtained in a hierarchical method. In the UK specific rules allow consumers to immediately ask for a price reduction or rejection of item. Usually, companies always try to firstly repair item before giving a refund.¹⁰⁸ The possibility to take action in the court in the UK is 5 years and 6 years for Scotland¹⁰⁹, nothing extra compared to Sweden where it is possible to sue the seller 7 years after the legal guarantee period if a proof is provided.

Commercial warranty in the UK works just like in other examples that the period of it depends on how expensive the product is (1 to 5 years and most cases 2). Usually, there is the

¹⁰² European Union. Guarantees and Returns – United Kingdom, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/united-kingdom/index_en.htm. Accessed April 12, 2019.

¹⁰³ Scottish Affairs. How does the legal system in Scotland differ to the one in United Kingdom, available on: <https://www.scottishaffairs.org/how-does-the-legal-system-in-scotland-differ-to-the-one-in-united-kingdom>. Accessed May 5, 2019.

¹⁰⁴ United Kingdom. Consumer Credit Act 1974. Available on: <https://www.legislation.gov.uk/ukpga/1974/39/section/75>. Accessed May 4, 2019.

¹⁰⁵ Money Saving Expert. Section 75 refunds, available on: <https://www.moneysavingexpert.com/shopping/section75-protect-your-purchases/>. Accessed May 4, 2019.

¹⁰⁶ https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/united-kingdom/index_en.htm

¹⁰⁷ United Kingdom. Consumer Rights Act 2015. Available on: <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>. Accessed May 5, 2019.

¹⁰⁸ United Kingdom. Consumer Credit Act 1974. Available on: <https://www.legislation.gov.uk/ukpga/1974/39/section/75>. Accessed May 4, 2019.

¹⁰⁹ Ibid.

extra price for commercial warranty or other conditions agreed between the seller and the buyer.¹¹⁰

2.3.2 Implementation of Directive 1999/44/EC

In the United Kingdom, the transposition of Directive 1999/44/EC is similar to approach as Sweden had. Mainly the Directive was implemented through Acts and regulations. Amendments were made to their existing consumer-related legislation to reach the goal of consumer protection principles laid down by the EU. There is an idea that the UK creates its legislation in copy-paste manner.¹¹¹ At first CSG Directive had an association with The Sale and Supply of Goods to Consumers Regulations 2002¹¹² where this legislation had many key points from CSG Directive, but it was not precise, clear from the perspective that the consumer's rights were laid down in a complex manner.¹¹³ Adjustments had to be made and legislators introduced the Consumer Rights Act 2015¹¹⁴ where they fixed the previous problems, giving all definitions, principles and additional rights in a proper way.

The use of minimum harmonization in the UK is very minimal. Like the standard principles of warranty is highest in the EU (5 years, 6 years in Scotland), the UK chooses to grant even higher consumer rights. Germany as a newcomer to the consumer protection sphere used minimum standards more than Sweden and the United Kingdom. Sweden and the UK chose to make their own standards and among the EU countries, the UK has sort of ‘gold-plating’ on specific rights.¹¹⁵ Although the measures regarding guarantee are high, the timeliness of implementation of Directive into national law was almost too late. The Commission already launched legal action against the United Kingdom because of slow implementation, but the UK barely transposed the legislation without any penalties.¹¹⁶ Out of three examples, the UK was the only country that had problems with timeliness of implementation of this Directive correctly. This might be because the UK likes to make their own rules and as a big nation would not like to listen to somebody what to do. Already before the main principles were implemented into their legislation, but the EU did not like the manner how legislation was written.

2.4 Concluding part 2

Overall the comparative analysis is used to mirror how different regions of Europe (Germany as central, Sweden as Northern and the United Kingdom as the distinctive region apart from Europe) uses minimum harmonization principle and also handles implementation with the use of diverse techniques regarding the Directive 1999/44/EC into their legislation. Germany was one of the founders of the European Union and there was an expectancy that all legislation

¹¹⁰ Ibid.

¹¹¹ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium , p. 77.

¹¹² United Kingdom. The Sale and Supply of Goods to Consumers Regulations 2002. Available on: <https://www.legislation.gov.uk/ukxi/2002/3045/contents/made>. Accessed May 5, 2019.

¹¹³ Publications Office of the European Union. Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU. Available on: <https://publications.europa.eu/en/publication-detail/-/publication/99768f6c-05f1-11e6-b713-01aa75ed71a1/language-en>. Accessed May 5, 2019.

¹¹⁴ United Kingdom. Consumer Rights Act 2015. Available on: <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>. Accessed May 5, 2019.

¹¹⁵ Ebers, Twigg-Flesner, and Schulte-Nölke, EC Consumer Law Compendium , p. 77.

¹¹⁶ Ibid.

should be well-formed and implemented without any problems; however, it completely used minimum harmonization principle and made a lot of change to their legislation because there were no special provisions on consumer protection laws. Sweden has the youngest membership of the union from compared examples and it handled the Directive in a better way since standards are higher and there were no issues with the implementation, timeliness was also nearly perfect. Sweden already before the EU issued the Directive had laws on consumer protection. It shows that no matter how much years a country had been in the EU the standards and implementation is purely based on the country's capacity and previous work on legislation. The United Kingdom is different because of their legislative system and 'gold-plated' standards. Although the UK had already some provisions on consumer protection just like Sweden, it had to do adjustments to make laws clearer for its citizens and timeliness was barely in time.

Regarding warranty principles, every compared country in this research has different standards. Most of the EU countries make use of minimum harmonization principle just like Germany. Sweden shows a higher bar of standards having 3 years of the legal guarantee. It could be a possible solution for full harmonization to use 3-year guarantee if the EU would decide to improve consumer protection overall since most countries have 2 years. However, it could hurt countries that have higher standards just like the UK where the legal guarantee is 6 years and 5 years in Scotland. Countries that had a foundation in consumer protection before any EU initiatives (Sweden, United Kingdom) have higher standards than Germany where many laws were made specifically to protect consumers. In every case, the producer is responsible for putting things right, except the UK where also a provider of money can be held liable for defective goods and if there are problems with that, ECC-net helps to solve those disputes. There are no extras in from German principles regarding Directive, but Sweden and the United Kingdom gives more opportunities to its consumers. Sweden has a specific legal guarantee on immovable property of 10 years; this guarantee is not found in other countries. The CSG Directive sets out an important point that every action or proof should be brought within a reasonable time, but all actions can be brought within the legal guarantee period. It is not clear what exactly reasonable time means but it may depend on the product and issue. Germany and Sweden have rights of remedy that is in the hierarchical method:

- 1) Replacement or repair is offered;
- 2) Full refund or reduction in price.

In the UK there is right for consumers to obtain a full refund without this kind of hierarchy, but companies will almost always try to repair the product before giving a refund. Consumers can always ask for an immediate refund. The most significant law about legal guarantees in the United Kingdom that is completely different from other countries is that whenever a consumer has bought something with a credit card, there is a possibility to make claims against the finance companies, because of laws that make the provider of money also liable for defects. It is something that has been established in their national laws and Germany or Sweden does not have such extra. This means that if problems arise money provider work just like ECC-net and contacts producers to solve issues. The possibility to take action to the court is usually that guarantee period (2 years in Germany, 5 years in the United Kingdom), but in Sweden, there is additional period to bring an action to the court of 10 years after the delivery to prove defect that happened within the legal guarantee period. It is uncertain how it works

and how it is possible to prove defects after such a long time but Sweden allows doing so. Commercial warranty works the same in all examples and the extra warranty period is 1 to 5 years depending on the value of the product.

When implementing Directive 1999/44/EC Germany had the most issues with that because of almost no foundation in consumer protection. Sweden is part of “Nordic” country family tree and there were some provisions on consumer protection already before the Directive was realized. The United Kingdom as well had pre-existing legislation that protected consumers that is why there were no real legislative problems. In Germany new laws in the BGB were written to ensure consumer protection; however, Sweden and the United Kingdom just adjusted their legislation to the Directive. The United Kingdom had only problems with clearance of its laws and definitions that the EU wanted to fix. Sweden and the UK had a very similar technique of implementation just by transposing acts of consumer protection into the upgraded version of the legislation. Germany had a technique of three phases where many adjustments were made. Sweden and the United Kingdom did not make significant use of minimum harmonization principle when implementing the directive, but Germany fully used this principle to create adequate consumer protection. There was a difference in the timeliness of implementation where Germany and Sweden did everything within a reasonable time and had no caution from the EU; however, the UK was warned and barely did it in time.

3. An economic perspective on transaction costs in legal guarantees

On the perspective of law and guarantees, it creates more than just principles that favor the consumer but also creates a hidden financial burden to the producers and retailers. Before any consumer rules, companies just offered extra service for an additional cost (commercial warranty) that if there are problems with the product repair or replacement is provided. It was another way to make revenue because it was not the case that the product was defective at all times. Since Directive 1999/44/EC became enforced and implemented into national legislation of member states, every company obtained new “hidden” costs, risk and responsibility for their produced goods. Consumer protection is not only law and obligation but also is closely connected with economic activities because there are additional transaction costs added to the price of the product. The transaction cost analysis is made in organizational terms about the governance and decisions in the companies.¹¹⁷

Whenever a company sells goods they gain revenue but because of new laws on consumer protection, additional risks came along with it. It means that the revenue is not 100% obtained by the company since there is at least 2-year legal guarantee attached to goods. If anything defective happens or problems with any kind regarding the CSG directive, then companies are liable for fixing that. This liability brings a burden to companies and favorable terms to the consumer. On account of that whenever company sells products to the consumer they gain uncertain revenue because at any timing defect can be reported and it may be the case that it is something that company has a responsibility to fix if it is not consumer’s fault.

¹¹⁷ Richman, Barak D. and Macher, Jeffrey Thomas, Transaction Cost Economics: An Assessment of Empirical Research in the Social Sciences (August 2006). Duke Law School Legal Studies Paper No. 115. Available on: <http://dx.doi.org/10.2139/ssrn.924192>. Accessed May 7, 2019.

3.1 Transaction costs and legal guarantees

Transaction costs can be of a different kind and that is the amount of money that the consumer will never see on the price tag. The reason for that is that transaction costs involves many actions before the product is on the shelf, such as, making the contract, negotiation of terms, drafting the contract, enforcing it¹¹⁸, all the legal fees, labor to bring the product to the market¹¹⁹, adding up amount to somehow compensate for possible legal guarantee activation. Every single of these actions takes time, expertise and money to do even before the product is being sold. That is the reason why goods have different prices; companies negotiate distinctive terms and have diverse expenses when getting their product to the market.

The transaction costs by theory have 3 types:

- Search and information costs;
- Bargaining and decision costs;
- Policing and enforcement costs¹²⁰.

Transaction costs also involve the risks in places where it is dangerous that there should be guarantee from the manufacturer that company that distributes goods receives the goods.¹²¹ This is a theoretical concept that works on contracts between manufacturer and retailer; however, when associating transaction costs to the consumer it is looked at from different concept because the contract as such is disparate.

Transaction costs are involved in any contract, even when you buy a loaf of bread the time that the customer is waiting in line to cashiers salary is the transaction cost.¹²² The more time a customer waits in line, he gets more impatient and unsatisfied. On one hand, looking at consumers the transaction cost is purely based on satisfaction and expectations. On the other hand, companies are trying to minimize the cost of product and distribution as such when making a contract with manufacturers. As Ronald Coase who was a significant British economist has said:

Markets are institutions to facilitate exchange, that is, they exist in order to reduce the cost of carrying out exchange transactions¹²³

It is said about markets and how they work and why transaction costs are necessary. When a guarantee is activated it is a different kind of relationship because then contract does not really involve reducing costs, but it is about satisfaction. Both of these concepts somehow differ from each other since when a consumer buys regular goods from retailer transaction

¹¹⁸ Robert Cooter and Thomas Ulen, Law and Economics (Don Mills, Ont.: Addison-Wesley, 1999).

¹¹⁹ Market Business News. What are Transaction Costs? Definition And Meaning, available on: <https://marketbusinessnews.com/financial-glossary/transaction-costs-definition-meaning/>. Accessed May 8, 2019.

¹²⁰ SAN JOSÉ STATE UNIVERSITY. The Transaction Cost Approach to the Theory of the Firm, available on: <http://www.sjsu.edu/faculty/watkins/coase.htm>. Accessed May 8, 2019.

¹²¹ Donald Wittman, Economic Foundations of Law and Organization (Cambridge: Cambridge University Press, 2006), p. 34.

¹²² Ibid.

¹²³ Heinrich Heine Universität Dusseldorf. The Rule of Law and the Emergence of Market Exchange: A New Institutional Economic Perspective, available on: http://www.dice.hhu.de/fileadmin/redaktion/Fakultaeten/Wirtschaftswissenschaftliche_Fakultaet/DICE/Discussi on_Paper/276_Haucap.pdf p5. Accessed May 9, 2019.

costs are based on different criteria. By using the theory of transaction costs it is possible to evaluate how it connects guarantee, the seller and the consumer.

3.1.1 Transaction costs between manufacturer and retailer

All types of transaction costs (internal and external) are easily seen in contracts where a producer sells goods to the retailer. Information costs are when within the deal people pass information. For example, at first it was intended to deliver goods by road with a truck, but it would lead to more expenses on transport, that is why both parties negotiate to ship the goods with cargo. This is when people have to pass around the information within the company so the deal would lead to a better outcome. The passing of information requires people to do activity in the company that is why they have to be paid for a job.

They have to be paid for the job that is done. Bargaining and decision costs are associated with negotiations and they also can take time and resources. If the product has very significant value such as a diamond and the buyer really wants it, but the seller is not happy with contract yet it can take a very long time to conclude such contract¹²⁴. All the effort and re-negotiations adds up to more transaction costs. This is a case of the bilateral monopoly of course.

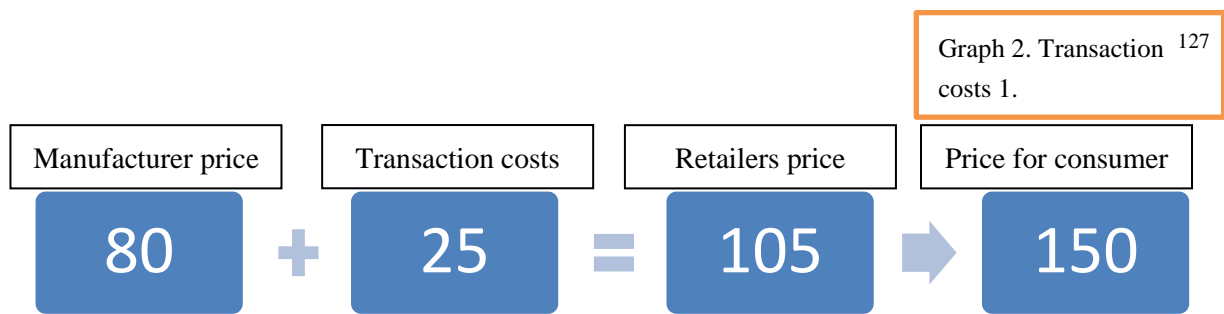
Policing and enforcement costs are involved when making sure that parties are sticking to the contract.¹²⁵ Both parties negotiate terms and they have to follow them and transaction costs involve also resources for ensuring that. There are of course situations when monitoring costs are close to 0 because when negotiating a simple deal. An example is when there is a low amount of goods and they are shipped or delivered in one box. The complexity attaches when there are many cargos with the wheat of specific breed and weight. It is not easy to organize and monitor large delivery with more than one truck or ship.

It is set out by the EU that the seller is responsible for defective good and guarantee when a product is sold to the consumer. In most cases, the seller is not the actual manufacturer of products that the consumer buys. Most of the time people buy goods from retailers, stores and internet shops that buy their line of products from manufacturers. The EU legislation sets out that on special terms when the retailer and manufacturer have concluded a contract where the manufacturer also takes responsibility for the guarantee, fixing or even replacing the products.¹²⁶ This means that transaction costs are higher with such a deal. By using the theory of transaction costs two graphs are made to better understand how the manufacturer would approach the contract with the distributor.

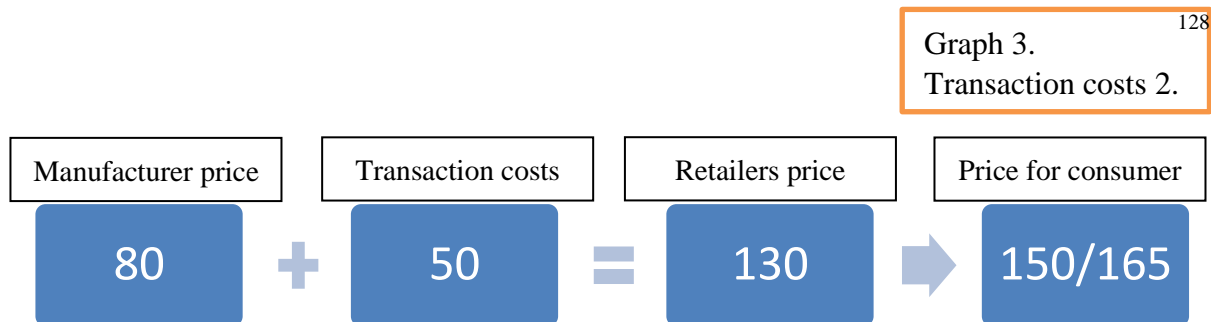
¹²⁴ Wittman, Economic Foundations of Law and Organization, p. 35.

¹²⁵ Ibid, p. 37.

¹²⁶ European Union. Guarantees and Returns – Ireland, available on: https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/ireland/index_en.htm. Accessed May 9, 2019.



Graph 2 is an example when a retailer buys, for example, a music player device. After manufacturing the price to gain profit to the manufacturer is set to 80. In this case, there is no special contract in which the manufacturer has to be responsible for a warranty that is why transaction costs are lower (25) accounting only for transport, negotiations, and monitoring. This lead to a situation where the retailer has the possibility to gain more profit of 45 because of low transaction costs. It also creates more risk on retailers (the seller to the consumer) because in case of defects that can certainly appear when the consumer uses the device. There is more potential to earn more revenue but also that if the defect is not repairable, the seller has the obligation to grant the consumer even full refund which would lead to greater loss.



Graph 3 is another example when a retailer buys the same music player device. Price for the device remains the same (80) from the manufacturer but the major difference here is that this is a different kind of contract and requires more negotiations. In this case, there is less potential to earn more revenue for the retailer but also there is less to no risk. Transaction costs now are 50 units because manufacturer calculates that there is a possibility that product may have defects and when the consumer that bought that device activates legal guarantee manufacturer has obligation to fix the problem or grant a refund. The retailer now buys music player device for 130 instead of 105. It is on retailer's competence to decide how to sell the product:

- 1) Keep the same price of 150 and easy sell it to gain profit of 20 units;
- 2) Raise the price to 165 units to maximize profits to 35 units but it would be harder to sell a product.

It could maybe be advantageous for a manufacturer to make such contracts because they make the product and have the most knowledge of how to fix problems/defects. But then again the

¹²⁷ This graph was made by the author of thesis to picture Transaction Costs when retailer takes care of legal guarantee.

¹²⁸ This graph was made by the author of thesis to picture Transaction Costs when manufacturer takes care of legal guarantee.

transaction cost concept is all about reducing those costs so companies could make more money. It creates risk and also improves the possibility to earn more profits; it is only to decide what is more worth. Of course, every aspect should be taken into account because some products involve less or more risk of creating a defect, some products are hard to transport and even some of them requires complex negotiation and monitoring.

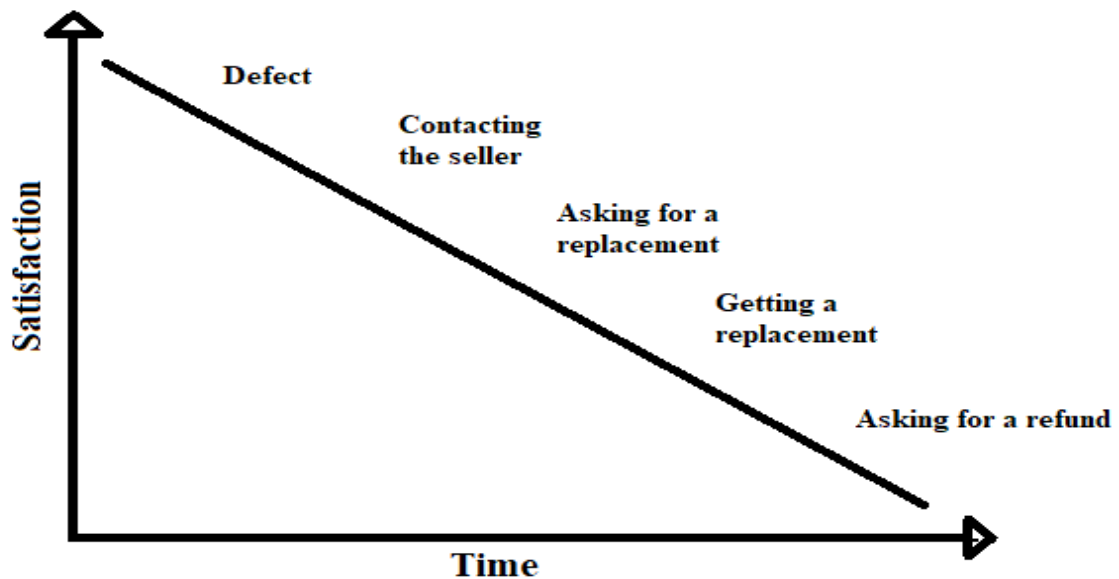
3.1.2 Transaction costs between the consumer and the seller

Whenever there is sale contract made between the consumer and the seller most of the times there are no regular transaction costs of information, negotiation, and monitoring because the price is set, all necessary information is provided and consumers have their rights regarding the product because of consumer protection laws. By using the theory and concept of transaction costs it is possible to evaluate how the transaction cost model contribute to the consumer to the seller relationship. The author explains it as a similar economic model.

A perfect example to connect guarantee with transaction costs is that whenever companies make a contract, the selling price is X, when a retailer sells it to the consumer the price is Y, they are completely different. This is due to the fact that between both companies (usually manufacturer and retailer) there are transaction costs (the price of transporting goods from A to B, information, contracts) and that is the reason why the price is different. Whenever a consumer buys a product a new contract is made between the consumer and the seller. The seller or manufacturer (depending on their contract) has an obligation to fulfill guarantee provisions and fix problems in case of the faulty product. On this contract, there are no transport costs (if no special delivery is made) because the price is already fixed on the end when the retailer bought goods from the manufacturer. In trading terms, new transaction costs become apparent when the consumer buys a product. In a situation when the consumer has bought a toy and it is defective some elements are already lost such as time and joy that generally reduce the satisfaction from buying a product. They can be accounted for as transaction costs in this kind of contract. When a company agrees to repair the toy and does not do it within a reasonable time it creates more frustration for the consumer. When waiting a long time enough without any fix, the consumer may inquire to get a full refund and the seller is losing profits. It really takes effect on both parties in terms that the consumer's psychological costs¹²⁹ (satisfaction of product) are affected and the seller's revenue is at risk. If there is a situation when the consumer has bought a gift that does not work it creates even more discomfort because the present cannot be used. When activating warranty the consumer can get the same product without paying anything. But what about the sufferings that already happened? It is a birthday; the consumer's friend really wants that present and cannot get it in time. It is presented that replacement comes without any problems but people have behavior, emotions and time spent in such situations. If the seller agrees to make a replacement but in the stock, they are out of that product, the consumer can choose another one and it takes more time as well.¹³⁰

¹²⁹ Richard L. Oliver, *Satisfaction: A Behavioral Perspective on the Consumer* (Armonk, NY: M.E. Sharpe, 2010), p. 391.

¹³⁰ Ibid.



Because people are emotional beings sometimes a replacement would not compensate for emotional sufferings and just inquiring for a refund to buy the same product from different store may be the case. In graph 4, it shows time that consumer spends on actually getting his product if it is with a defect to satisfaction. Whenever the consumer buys a product there is a feeling of happiness and satisfaction that something is bought and will be used. With time this satisfaction decreases if the consumer cannot actually use the product and has to do additional actions to finally benefit from it. People very fast get irritated and for some people, this line is even steeper. To recall, it was concluded in the first part of the research, sometimes companies even ignore requests for replacing, fixing or refunding goods. In those situations, the psychological costs become even greater when consumers have to contact ECC institution to even exercise their rights. Of course, there are two sides in these scenarios that companies have new responsibilities and risk of losing profits and consumers who require to have fair trading and there is no actual compensation for sufferings of time that is spent on obtaining refund or replacement and satisfaction with the product.

3.1.3 Warranty accounting

As already mentioned before, transaction costs involve a risk for the manufacturer or the seller. Sometimes it does not make a significant effect on companies if products are simple and cheap. Warranty creates a liability for the company from the moment when the product is sold and warranty expires.¹³² By default, it is considered a long term liability because of accountancy standards. The Directive 1999/44/EC grants legal guarantee of at least 2 years and 1 year is considered as a short-term liability, over 1 year it already is long-term.¹³³ It means that basically, the price of the product goes on both account sides of debit and credit. To use the same example as before with music player device the author makes table to better understand this concept.

¹³¹ This graph was made by the author of thesis to picture how satisfaction of buying a product is affected by time to replace it because of defect.

¹³² Accounting Tools. Warranty accounting, available on: <https://www.accountingtools.com/articles/2017/5/14/warranty-accounting>. Accessed May 11, 2019.

¹³³ Ibid.

Table 2. Warranty accounting¹³⁴

	Debit	Credit
Warranty expense	150	
Accrued warranty liability		150

This shows that whenever a company sells a product it cannot be accounted for as profit immediately because during the legal guarantee period there may be the chance that defect can appear. There is this concept that defects should be introduced within a reasonable time and if the consumer tries to get a refund or replacement for defect 1 year after purchasing the product, the company will always inquire to prove that the defect is not caused by the consumer but is a technical issue that product caused by itself. This procedure makes sure that consumers also are not abusing the system. In this case, it is mirrored as if the product would be refunded or replaced with a new one but of course, the legal guarantee has a hierarchy of firstly offering a repair. Then the debit and credit reduce because the whole amount is not lost but only some part of it to repair the product.

Table 3. Warranty accounting 2¹³⁵

	Debit	Credit
Warranty expense	50	
Accrued warranty liability		50

In this situation, debit and credit are reduced because only 50 units of currency are used to fix the music player device. This leads to fewer costs from the side of the seller. This is the reason why companies are allowed to work by the hierarchical method. If every person instantly would ask for a refund then it would create too much imbalance between the consumer and the seller.

3.2 Concluding part 3

Because of Directive 1999/44/EC companies that sell goods are allocated with new duties. Throughout the European member states, there is a minimum of 2 years legal guarantee period. In the stores the consumers see only price tags and products that are ready to be sold; however, they do not see the process of preparation. Those processes are called transaction costs. By theory transaction costs have three different types (information, decision, policing) and they are attributed to business to business relationships (manufacturer to retailer). Whenever legal guarantee is one of the negotiations of the contract in such a relationship it increases the transaction costs. It is due to the fact that upon making a deal both businesses decide who takes care of the warranty. If the manufacturer takes responsibility for warranty, then transaction costs are increased but if the retailer as the seller to the consumer is responsible for warranty transaction costs are lower. Whenever a retailer takes responsibility

¹³⁴ This table was created by the author of thesis to make better understanding of how warranty accounting works on refund or replacement.

¹³⁵ This table was created by the author of thesis to make better understanding of how warranty accounting works on repairing the product.

for the warranty it creates more potential to gain profit, but also there is more risk that product may appear to be with a defect which leads to fixing or refund.

Consumer to the seller relationship is different because the product is already prepared to be sold and used. In a situation when the consumer activates guarantee transaction costs have a different meaning than the business to business relationship. People are behavioral beings and they act on an emotion that is why transaction costs contribute to psychological costs. All the time spent on contacting the company for a fix or refund, waiting throughout paperwork, having frustration when the defect cannot be fixed is psychological costs. If the ordered product is a gift or other special occasion and it appears to not be working it adds more dissatisfaction. With more time spent on obtaining a fix for a defected product, the satisfaction decreases and some people may even want to get a refund because of irritation. Transaction costs in this aspect are based on satisfaction and expectations of the consumer.

The warranty has a special way of accounting. Because of the CSG Directive, it creates long term liabilities for companies. The price of the product is counted as both credit and debit until the warranty has expired. If defects are not reported within a reasonable time, then the consumer has to prove that it is not their own fault which leads to less risk of losing money on the product. When the consumer is granted with legal guarantee repair then the price of fixing is counted as debit and credit and leads to less loss in profits. This is why most of the EU member states give a refund in hierarchical method (repair and then only refund).

Conclusion

The CSG Directive has introduced a new way of life for consumers all around the European Union. Nowadays we could not imagine living without these rights. Whenever the consumer is not sure about the quality of the product there is right to get it fixed or even obtain a full refund. The research has revealed problematic fields of this Directive and what institutions help out whenever there is a problem with companies. This directive has also changed how companies work, adding more responsibilities to their operations.

One of the interesting parts of CSG Directive is that it works on minimum harmonization principle, allowing every member state to create their own standards. There is a minimum value of 2 years of the legal guarantee, but in some cases in the EU legal guarantee can even be 6 years. It creates a positive impact because countries can decide to treat their citizens even more favorable. If suddenly one of the member states determine to advance standards of consumer protection it is allowed as well.

One of the main aims of the thesis was to reveal so-called “grey areas” in the consumer protection and legal guarantees. There are two levels of issues, firstly, the day to day cases when a consumer buys a product and defect becomes apparent, secondly, on the EU level of Court of Justice. To solve disputes the EU has created ECC-net (European Consumer Centers network) institutions and each country has its own establishment. They help to solve problems in ADR method (Alternative dispute resolution) to handle disputes in out of court. The “grey area” of these cases is mirrored in a way that companies sometimes try to fool the consumer and sometimes even does not respond to inquiries. There are situations when the consumer should be granted with repair or refund but companies claim that either their warranty has expired (before 2 years of legal guarantee has passed) or simply ignoring the messages. This

creates a feeling to the consumer that there are rights but no way to bring justice. That is why ECC-net handles such cases and contacts responsible companies on behalf of the consumer. Most of the cases are settled in ECC but the consumer has to be educated and contact this instance. There are also "grey areas" in the EU level. They are mostly connected with how member states have implemented this Directive into national legislation. One of the issues is that national law provisions collide with the Directive like in case C-404/06 *Quelle*. The EU law is above national law in the hierarchy but still, disputes arise based on such mistakes. The ECJ also has set an unsure precedent about proportionality and legal guarantees that the seller was not treated proportional and had to bear the costs that exceeded the price of goods. Even AG and other member states had opinions that both parties should be treated fairly and somehow equally but ECJ ruled favoring the consumer exceeding the proportionality. There should be a balance between the consumer and the seller or with such precedent more issues can arise.

In the thesis, by using comparative analysis it was revealed how standards of warranty can vary from state to state. By comparing Germany, Sweden, and the United Kingdom the author revealed different standards and methods of implementation of CSG Directive. The main aim of this part was to understand to what extent countries can go beyond the minimum harmonization principle and what are the problems regarding the implementation of this Directive. Germany as one of the founders of the EU has minimum standards of 2-year legal guarantee. There is an expectation that with such title Germany should have higher standards. Sweden is one of the successors in northern Europe with 3 years of the legal guarantee. Even as the youngest of the compared countries that joined the EU, Sweden has higher standards than Germany. The United Kingdom has significant "gold plated" standards of 5 years of legal guarantee and 6 years in the region of Scotland. Sweden and the United Kingdom had already some background laws on consumer protection but Germany did not. Germany made a lot of changes to their laws in order to implement the Directive. Sweden and the United Kingdom had a similar approach that existing laws were adjusted to satisfy CSG Directive. It shows that no matter how many years a country had been in the EU the standards and implementation is purely based on the country's capacity and previous work on legislation. The United Kingdom is a distinctive example because of its internal laws that even credit card company (the provider of money) is liable for defective goods. When a legal guarantee is activated companies usually work by the hierarchical method. Firstly replacement or repair is offered and then only full refund or price reduction. Overall, the European Union gives advantage for member states to decide their own terms as long as everything is according to the minimum harmonization principle and the Directive.

From an economics point of view, the author analyzed how transaction costs work regarding the warranty. Those are costs that the consumer would not occur. By theory transaction costs have three different types (information, decision, policing) and they are attributed to business to business relationships (manufacturer to retailer). Depending on which party takes responsibility for warranty, transaction costs may vary. If manufacturer undertakes guarantees then transaction costs are higher, but if the retailer then they result lower. Whenever a retailer takes responsibility for the warranty it creates more potential to gain profit, but also there is more risk that product may appear to be with a defect which leads to fixing or refund. The author wanted to identify how transaction costs would be mirrored in consumer to the seller relationship. Consumer to the seller relationship is different because the product is already prepared to be sold and used. In a situation when the consumer activates guarantee transaction

costs have a different meaning than the business to business relationship. People are behavioral beings and they act on an emotion that is why transaction costs contribute to psychological costs. When a legal guarantee is activated there is a lot of time, energy and emotions spent on getting the product repaired, replaced or refunded for money.

Overall the Directive 1999/44/EC has a very good influence on consumers in the European Union. It creates more responsibilities for producers and sellers, but aims behind it are only for good. Companies also have to follow what kind of product they are selling so that quality also would be good without any defects. To everything good there are also drawbacks or “grey areas” attached to it and author in the thesis has identified them. To avoid those identified fields consumer should be more informed and educated about their rights. The EU already tries its best to provide information about the rights but society should be more involved. By comparing the United Kingdom it creates a possibility for further investigation about what would happen if the UK will actually leave the EU. How would it affect guarantees when a citizen from the EU buys something in the UK? The Directive as such has a progressive momentum because countries at any time can increase standards so those potential changes can be researched in the future.

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